

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3439.

— 684

MAE E. ANCRUM, APPELLANT,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBER-
ICH, CONSTITUTING THE MINIMUM WAGE BOARD OF
THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 13, 1920.

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Court of Appeals of the District of Columbia.

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INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Bill for injunction.....	1	1
Rule to show cause.....	8	6
Marshal's return.....	8	6
Answer to rule to show cause.....	9	7
Motion to dismiss bill.....	12	8
Opinion of the court.....	13	9
Decree discharging rule dismissing bill; appeal noted.....	14	10
Memorandum: Undertaking on appeal approved and filed.....	14	10
Assignment of errors.....	15	10
Designation of record.....	15	11
Clerk's certificate.....	17	11

Court of Appeals of the District of Columbia.

No. 3439.

MAE E. ANCRUM, Appellant,

vs.

JESSE C. ADKINS et al.

a Supreme Court of the District of Columbia.

No. 37889. In Equity.

MAE E. ANCRUM, Plaintiff,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH, Constituting the Minimum Wage Board of the District of Columbia, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill for Injunction.*

Filed May 19, 1920.

In the Supreme Court of the District of Columbia.

Equity. No. 37889.

MAE E. ANCRUM, Plaintiff,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH, Constituting the Minimum Wage Board of the District of Columbia, Defendants.

To the Supreme Court of the District of Columbia:

The Plaintiff respectfully represents as follows:

I. That the plaintiff is a woman of the age of 43 years, and is a resident of the District of Columbia; that the defendants are resi-

dents of the District of Columbia and are members of the Minimum Wage Board of the District of Columbia.

II. That the Congress Hall Hotel Company is a corporation, organized and existing under the laws of the District of Columbia, and is engaged in the business of conducting a hotel; that plaintiff is employed by said hotel as an elevator operator and receives therefor a salary of \$50 a month and two meals a day, in compensation for her services; that said work in said hotel is light and healthful, physically and morally, that the hours of labor are short, not over six hours a day, and that the surroundings in which the plaintiff works are agreeable and pleasant, that the plaintiff is anxious to continue to work for the wages and board now paid, and that plaintiff does not earn any greater wages.

2 The plaintiff states that she has been notified by the Congress Hall Hotel Company that, while her services have been entirely satisfactory and while the hotel would be glad to continue her services at the same wages, the hotel company will be unable to do so, but will be compelled to dispense with the services of plaintiff on May 26, 1920, by reason of a certain Act hereinafter referred to, and a certain order of the defendants purporting to make it a criminal offense for the said hotel company to continue to employ the plaintiff at said wages which are satisfactory to the plaintiff, and denying to said hotel company its freedom of contract with the plaintiff, and denying to the plaintiff her right to work for whom she pleases at such wages as she pleases. Plaintiff states that she is of sound mind and understanding and does not desire such guardianship or interference with her personal freedom to make her own contracts.

Plaintiff further states that the hotel company may place a man in the plaintiff's position at the same wages plaintiff now receives, and which plaintiff would be glad to continue to receive, and that a man is free to work for whom he pleases, at such wages as may be mutually agreed upon between him and his employer; but that under said Act and said order this freedom is denied to the plaintiff merely because she is a woman.

III. That heretofore on September 19, 1918, the Congress of the United States passed an Act entitled "An Act to protect the lives and health and morals of women and minor workers in the District of Columbia and to establish a Minimum Wage Board, and to define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes." Said Act created

3 a Board to be known as the Minimum Wage Board of the District of Columbia. Under color of said Act, the Commissioners of the District of Columbia appointed as members of the said Board, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, the defendants named herein, who pretended to enter upon the discharge of their duties as such Board.

IV. That on June 13, 1919, assuming to exercise authority under said Act, the Minimum Wage Board issued the following order:

"M. W. B. Order No. 4
Hotel, Restaurant
and allied industries

District of Columbia,
Minimum Wage Board,
502 District Building.

Washington, D. C., March 26, 1920.

To Whom it may Concern:

Take Notice: That pursuant to the authority in it vested by the Act of Congress known as the District of Columbia Minimum Wage Law (Public numbered 215, 65th Congress) and after public hearing duly held in Washington, D. C., on Monday, March 22, 1920, The Minimum Wage Board of the District of Columbia does hereby order that:

1. No person, firm, association, or corporation shall employ a woman or minor girl in any hotel, lodging house, apartment house, club, restaurant, cafeteria, or other place where food is sold to be consumed on the premises or in any hospital, at a rate of wages of less than $34\frac{1}{2}$ cents per hour, \$16.50 per week, or \$71.50 per month. This shall not be construed to include nurses in training.

2. When bona fide meals are furnished by the employer to any woman or minor girl employed in the establishments named in Section 1 of this order as part payment of the wages of such employee, not more than 30 cents per meal may be deducted by such employer from the weekly wage of such employee. A record shall be kept of the number of meals furnished each woman and minor girl per week and of the deductions made from the weekly wage for the same; otherwise the full minimum wage rate shall be paid in cash.

3. When lodging is furnished by the employer to any woman or minor girl employed in the establishments named in Section 1 of this order as part payment of the wages of such employee, not more than \$2.00 per week shall be deducted by such employer from the weekly wage of such employee.

4. Tips and gratuities shall not be construed as part of the legal minimum wage.

This order shall become effective sixty (60) days from date hereof.

MINIMUM WAGE BOARD OF THE
DISTRICT OF COLUMBIA.

JESSE C. ADKINS,

Chairman.

ETHEL M. SMITH.

JOSEPH A. BERBERICH.

Attest:

CLARA MORTENSON,

Secretary.

Notice: This order will become effective May 26, 1920.

Your attention is respectfully called to the following sections of Public numbered 215, 65th Congress:

Whoever violates this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (Section 18.)

Every employer affected by this order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers are employed. (Section 12.)"

V. That the wages which this plaintiff is receiving as aforesaid are the best wages and compensation for her labor that she is able to receive for any employment or labor which she is capable of performing, and if said order shall be enforced the plaintiff will be deprived of her said employment and wages. That the plaintiff has no other trade or occupation, and has no means of earning her living other than by the pursuit of her said occupation. That the work in the hotel where plaintiff is engaged is light and healthful and the surroundings clean, and the moral atmosphere and conditions are the best. That by said employment plaintiff lives and maintains herself in health and comfort. That plaintiff is employed in said

5 hotel pursuant to an agreement between the plaintiff and the said hotel company, but that said defendants and each of them threatens to, and will, unless restrained by this court, cause the plaintiff's employer, said Congress Hall Hotel Company, to be prosecuted for employing this plaintiff for said work in said hotel at such rate of wages, agreed upon between the plaintiff and her employer, the same being less than the minimum wages prescribed in said order of said Board, although said wages and board are entirely satisfactory to the plaintiff, and although plaintiff would be glad to continue to work at said wages; and if said defendants are permitted to enforce said order, said hotel company will be denied the right to contract with the plaintiff to continue to work at said wages, and plaintiff will be denied the right to contract for her services for said wages, and deprived of her position and of her means of earning a living, because she is a woman over the age of 18 years.

Plaintiff further avers that she cannot secure any other position in which plaintiff can make a living in as healthful surroundings, physically and morally, and earn as good wages as she now receives; and that there is no position plaintiff could fill more wholesome to health and morals than the position she now holds for the wages she now receives.

The plaintiff avers, moreover, that if the said defendants shall be restrained by this Court from enforcing the said order, then the plaintiff will continue in said employment at the wages being paid her as aforesaid, and at which wages this plaintiff is desirous of continuing, and will thereby continue to earn her living as aforesaid if permitted to do so.

6 VI. And this plaintiff avers that said Act of Congress is not a law in the said District of Columbia, but is void and of no effect, because it is repugnant to and in violation of the Constitution of the United States in that, and said order made under color of said Act is void because,

(1) Said Act and order deprive plaintiff of her means of livelihood, her property, and of her liberty without due process of law.

(2) In attempting to make it a criminal offense for the Congress Hall Hotel Company to continue to employ the plaintiff at wages satisfactory to said hotel and to the plaintiff, there is an unconstitutional interference with plaintiff's freedom of contract.

(3) Said Act and order attempt by legislative decree to declare that plaintiff's health and morals would be injured by continuing to work for the satisfactory wages she is now receiving, whereas the contrary is the fact.

(4) Said Act and order deny to plaintiff the right to work in surroundings pleasant, healthful and moral, for whom she pleases and at wages satisfactory to her; while at the same time said Act and order do not deny men the right to work for whom they please at such wages as they may please.

(5) Said Act and order attempt to make the plaintiff a ward of the Government and to treat the plaintiff as being incompetent to contract, thus abridging and denying the plaintiff her rights under the Constitution of the United States.

(6) That Congress has no authority under the Constitution of the United States to fix the price of plaintiff's labor.

(7) That said Act and order discriminate against the plaintiff merely because she is a woman, and attempt to deny to her rights enjoyed by all male citizens of the United States to work for whom she pleases at such wages as may be agreeable to her.

(8) That said Act and order deny to plaintiff the equal protection of the laws.

(9) That said Act and order provide for the taking of the property of this plaintiff without just or any compensation.

7 VII. That plaintiff has no plain, adequate or complete remedy at law and until the defendants, and each of them, shall be restrained from attempting to enforce said unconstitutional statute and said void order against the employing of this plaintiff, they will cause and compel the said employer to discharge this plaintiff and will deprive her of that employment and of the means of earning her living, and thereby entail upon her great and irreparable loss, injury and damage.

Wherefore, the premises considered, the plaintiff prays:

First. That the Court may cause its writ of subpoena to be issued directed to the defendants and each of them, commanding them and each of them to appear and answer the allegations in this bill.

Second. That the said defendants and each of them and their successors in office may be enjoined and restrained, both pending this suit and permanently at the final hearing thereof from enforcing or attempting to enforce the said order above set out, or any other order

which it has issued or may hereafter issue under said unconstitutional statute.

Third. That this Honorable Court issue a decree vacating said order and annulling said unconstitutional statute.

Fourth. And for such other and further relief as to the Court may seem proper.

MAE E. ANCRUM.

CHALLEN B. ELLIS,
Attorney for Plaintiff.

CITY OF WASHINGTON,
District of Columbia:

Personally appeared before me, Mae E. Ancrum, who, upon being
duly sworn, states on her oath that she is the plaintiff in the
8 above-entitled cause, and that the facts stated in the foregoing
petition of her own knowledge are true, and that the facts
stated in said petition as on information and belief she believes to
be true.

MAE E. ANCRUM.

Sworn and subscribed to before me, this, the 18th day of May,
1920.

[SEAL.]

MINERVA G. CULTON,
Notary Public.

My commission expires on July 16, 1924.

Rule to Show Cause.

Filed May 19, 1920.

* * * * *

Upon consideration of the bill of complaint filed herein it is this
19th day of May, 1920, ordered that the defendants, Jesse C. Adkins,
Ethel M. Smith and Joseph A. Berberich, members of the Minimum
Wage Board of the District of Columbia, show cause, if any they
have, on or before 10.00 o'clock A. M. on Tuesday next, May 25,
1920, why they should not be enjoined and restrained, as prayed in
said bill of complaint, provided that a copy of this rule be served
upon said defendants on or before May 20, 1920.

JENNINGS BAILEY,
Justice.

Marshal's Return.

Served a copy of the within rule on Jesse C. Adkins, Ethel M.
Smith and Joseph A. Berberich—each personally.

May 19, 1920.

MAURICE SPLAIN,
U. S. Marshal.
K.

9

Answer to Rule to Show Cause.

Filed May 25, 1920.

* * * * *

I. The defendants admit the allegations of paragraph I except that they say the defendant Adkins is a citizen and resident of the state of Maryland.

II. The defendants are not advised as to the truth of the facts alleged in the second paragraph. If the same be material they call for strict proof thereof.

Defendants aver that upon the facts stated in said paragraph II the plaintiff is now being paid more than the minimum wage which must be paid her under the order of March 26, 1920 of the District of Columbia Minimum Wage Board set forth in paragraph IV of the Bill.

Plaintiff avers that her hours of labor are not over six hours a day. The order of this Board provides for a minimum wage of 34½ cents per hour. If plaintiff works seven days a week her working week would be 42 hours, her minimum wage would then be \$53.82 a month. From this the employer would be entitled to deduct 30 cents per meal for each meal furnished. Plaintiff avers that she receives two meals per day. Her employer is therefore entitled to deduct \$18.20 per month, leaving a cash minimum wage of \$44.59 per month which is less than plaintiff is now receiving.

III. Defendants admit the passage of the Act described in said paragraph and that under the provisions of the said Act they were appointed members of the Minimum Wage Board of the District of Columbia, that they duly qualified as such members, and now constitute the Minimum Wage Board of the District of Columbia.

IV. Defendants admit that they issued the order, copy of which is set forth in paragraph IV, but say that it was issued on March 26, 1920. Defendants aver that the said order was duly made after full compliance with all the provisions of the said District of Columbia Minimum Wage Law.

V. Defendants admit that under Section 16 of the District of Columbia Minimum Wage Law it is the duty of the Minimum Wage Board to investigate into the compliance of employers with its orders and to report all violations to the Corporation Counsel of the District of Columbia. The defendants aver that they have no further duty in the premises, but that under Section 21 of the Act, prosecutions for violations thereof are placed under the control of the Corporation Counsel of the District of Columbia. Defendants aver that they have no power over the acts of the Corporation Counsel and cannot compel him to institute prosecutions.

Defendants further aver that their practice heretofore has been whenever they found a violation of the law to first call the attention of the employer to the violation and to request him to correct it so far as the future is concerned and to pay to his employee whatever back pay she is entitled to under the statute. So far in the expe-

rience of the defendants the employers have taken this course and the Board has not referred any violation to the Corporation Counsel. If an employer should knowingly violate the law and refuse to correct his action after his attention has been called thereto, the Board would then report the violation to the Corporation Counsel with a request for prosecution.

Upon the facts set forth in plaintiff's Bill, defendants do not consider that a wage of \$50 a month and two meals a day would be less than the minimum wage to which she would be entitled if she works only six hours a day. Defendants would not therefore re-

11 request a prosecution of her employer under the said facts. As to the other facts set forth in paragraph V, defendants have not sufficient knowledge to answer the same. If they are material defendants call for strict proof thereof.

VI. Defendants are advised that the allegations of paragraph VI are all allegations of law. Upon information and belief they deny all of said allegations. On the contrary they aver that the Act of Congress referred to is valid and constitutional.

VII. Defendants deny the allegations of paragraph VII.

VIII. Defendants aver that by Section 17 of the District of Columbia Minimum Wage Law it is provided:

"That all questions of fact arising under the foregoing provisions of this Act shall, except as otherwise herein provided, be determined by the Board, and there shall be no appeal from the decision of the Board on any such question of fact; but there shall be a right of appeal from the Board to the Supreme Court of the District of Columbia from any ruling or holding on a question of law included or embodied in any decision or order of the Board; and, on the same question of law, from such court to the Court of Appeals of the District of Columbia. In all such appeals the corporation counsel shall appear for and represent the Board."

Defendants aver that plaintiff has a plain, adequate and complete remedy at law by a direct appeal to the Supreme Court of the District of Columbia from the order set forth in paragraph IV of the Bill and that this Court is without jurisdiction over the Bill of Complaint.

IX. Further answering the said petition for the purpose of the said rule, these defendants say that there are no matters of fact or law set forth in said petition which entitled it to relief in Court of Equity, or to a restraining order or injunction from such Court.

We therefore pray that said rule be discharged and the

12 petition herein dismissed.

JESSE C. ADKINS,

_____,
_____,

Minimum Wage Board of the District of Columbia.

DISTRICT OF COLUMBIA, ss:

We, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, being duly sworn, depose and say that we constitute the Minimum

Wage Board of the District of Columbia; that we have read the answer by us subscribed as such Board and know the contents thereof; and that the matters and things therein set forth upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

JESSE C. ADKINS,

_____,

_____,

Minimum Wage Board of the District of Columbia.

Subscribed and sworn to before me this 25th day of May, 1920.

MORGAN H. BEACH,

Clk,

By F. E. CUNNINGHAM,

Ass't Clk.

Motion to Dismiss Bill.

Filed May 25, 1920.

* * * * *

Now come the defendants by their attorney and move the Court to dismiss the bill in the above entitled cause, for that there
13 are no matters and things either of fact or of law set forth therein, to entitle her to equitable relief.

F. H. STEPHENS,

Attorney for Defendants.

Opinion of the Court.

Filed June 22, 1920.

* * * * *

Being of the opinion that the Minimum Wage act is constitutional the motion to dismiss the bill will be sustained.

As to the application for an injunction the bill in this case is based upon the contention that the Minimum Wage act is unconstitutional and that the Minimum Wage Board has no power to fix a minimum wage. In the case of *Wadley Southern Railway Co. v. Georgia*, 235 U. S. 651, at page 662, in referring to the cases in which injunctions were granted and speaking of the validity of legislative rates, Mr. Justice Lamar said:

"Their legality is not apparent on the face of such orders but depends upon a showing of extrinsic facts."

In addition, the rules of this court do not provide for the granting, by this court, of an injunction pending appeal, except where an injunction pendente lite has already issued.

It results therefore that the application for an injunction pendente lite will be denied; the rule discharged; and the bill dismissed.

JENNINGS BAILEY,

Justice.

Decree Discharging Rule, &c.

Filed June 25, 1920.

* * * * *

This cause having come on for hearing on the original bill filed herein and the rule to show cause why a preliminary injunction should not issue, the answer to said rule and the motion of the defendants to dismiss the petition and discharge the rule, and having been argued by counsel and considered by the Court,—

It is this 25th day of June, 1920, adjudged, ordered and decreed that the rule to show cause be discharged and the application for a preliminary injunction be, and the same hereby is, denied.

It is also adjudged, ordered and decreed that the bill filed herein be, and the same hereby is dismissed, at the cost of the plaintiff.

JENNINGS BAILEY,
Associate Justice.

From the above decree the plaintiff notes an appeal in open court; and the bond on such appeal is hereby fixed at one hundred dollars, (\$100.00).

JENNINGS BAILEY,
Associate Justice.

Form O. K.
C. B. ELLIS.

Memorandum.

July 16, 1920.—Undertaking on appeal approved and filed.

Assignment of Errors.

Filed July 16, 1920.

* * * * *

The plaintiff in the above entitled cause assigns errors to the decree herein of June 25th, 1920, as follows:

1. The Court erred in not holding the Act of September 19, 1918, entitled "An Act to protect the lives, the health and morals of women and minor workers in the District of Columbia and to establish a minimum wage board and to define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes," commonly known as the Minimum Wage Law for the District of Columbia, repugnant to the constitution of the United States, and void, and in holding said Act valid and constitutional;
2. The Court erred in refusing to grant a preliminary injunction;
3. The Court erred in discharging the rule to show cause;

4. The Court erred in sustaining the motion of the defendants to dismiss the bill of complaint and in dismissing said bill;

5. The Court erred in other respects apparent of record.

CHALLEN B. ELLIS,

Attorney for Plaintiff.

JOS. W. FOLK,

Of Counsel.

Service of the foregoing assignment of errors acknowledged this 16th day of July, 1920.

F. H. STEPHENS,

Corporation Counsel.

Designation of Record.

Filed July 16, 1920.

* * * * *

The Clerk will please prepare the record on appeal in the above entitled cause, including therein:

1. The following papers in full:

16

(a) Bill of complaint;

(b) Rule to show cause issued thereon;

(c) Answer of defendants to rule to show cause;

(d) Defendants' Motion to dismiss bill of complaint;

(e) Final decree discharging rule to show cause and denying preliminary injunction, fixing penalty of appeal bond, etc.;

(f) Assignment of errors;

(g) Opinion of Justice Jennings Bailey with respect to the decree;

(h) This designation.

2. *Memorandum only* of the following:

(i) Appeal bond.

CHALLEN B. ELLIS,

Attorney for Plaintiff.

JOS. W. FOLK,

Of Counsel.

Approved:

F. H. STEPHENS,

Corporation Counsel.

17

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 16, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made

part of this transcript, in cause No. 37889 in Equity, wherein Mae E. Ancrum is Plaintiff and Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, constituting the Minimum Wage Board of the District of Columbia, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 4th day of August, 1920.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3439. Mae E. Ancrum, appellant, vs. Jesse C. Adkins et al. Court of Appeals, District of Columbia. Filed Aug. 13, 1920. Henry W. Hodges, clerk.

(2017)

